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November 23, 1998

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
The Portals
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: GTE Corporation and Bell Atlantic Corporation Application for Commission Consent to Transfer of Control, CC Docket No. 98-184

Dear Madam Secretary:

Enclosed for filing are an original and 4 copies of TRICOM USA, Inc.'s Comments regarding the Application by GTE Corporation and Bell Atlantic Corporation for Commission Consent to Transfer of Control (CC Docket No. 98-184).

Please date-stamp the enclosed duplicate copy as received and return to the messenger for our records. Thank you for your consideration.

Respectfully submitted,

Judith D. O'Neill

Enclosures

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, For Consent to Transfer of Control.	)))))))	CC Docket No. 98-184

COMMENTS OF TRICOM USA, INC.

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Dated: November 23, 1998

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SUMMARY

TRICOM USA Inc does not. see any economic or services benefit to consumers of telecommunications services from the proposed GTE Corporation and Bell Atlantic Corporation merger. TRICOM would like both GTE and Bell Atlantic to formally explain the manner in which this merger of substantial resources including the control of bottleneck facilities on each side of many international telecommunications routes cannot be seen as a direct threat to competition on those routes as well as a threat to small niche service providers of those services. The applicants should be required to provide a detailed explanation of how consumer interests would be served by the elimination of small or competitive service providers, or alternatively, they should be required to provide assurances of how the merged company will avoid using its end-to-end control to squeeze out such competitors.

Accordingly, should the Commission consider the proposed merger, then TRICOM USA, Inc. urges the Commission to impose, at a minimum, the following conditions: 1) Pursuant to 47 C.F.R. Section 63.10, where the merged company has the potential of bottleneck control, it should be regulated as a dominant carrier on the U.S.-overseas routes, including without limitation to, the Dominican Republic and Venezuela and domestically between or among New York, Puerto Rico and other similarly situated locations; 2) GTE and Bell Atlantic shall present information to the Commission, prior to any merger, demonstrating that each affiliate or subsidiary lacks bottleneck control. Such information shall be subject to comment by interested parties; 3) Prior to authorization for transfer of licenses and authorizations, GTE and Bell Atlantic shall demonstrate that all overseas affiliates or subsidiaries they are now treating, and shall be required into the future to treat, all non-affiliated U.S. carriers in a non-discriminatory manner; 4) A process shall be implemented whereby the merged company shall provide detailed performance monitoring reports to the Commission, identical to those required for the Bell Atlantic-NYNEX merger, for a period of four years; 5) The Commission should impose other standards and requirements specified in the Bell Atlantic-NYNEX merger; 6) The Commission should impose any other conditions it deems necessary and appropriate to prevent anti-competitive behavior; 7) The Commission should impose a condition to avoid anti-competitive behavior or inaccurate reporting due to this potential;

and 8) Bell Atlantic and GTE should be prohibited from maintaining or assuming any role within any logistical or organizational system of the United States, or any regulatory or quasi regulatory role in any state or territory of the United States.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, For Consent to Transfer of Control.	)))))))	CC Docket No. 98-184

COMMENTS OF TRICOM USA, INC.

TRICOM USA, INC., headquartered in New Jersey, U.S.A., by its attorneys, hereby submit these Comments in the above-captioned matter concerning the application of GTE Corporation ("GTE") to transfer control of licenses and authorizations held by GTE subsidiaries and affiliates to Bell Atlantic Corporation ("Bell Atlantic"). TRICOM USA, Inc. (hereinafter sometimes referred to as "TRICOM") seeks clarification of the public interest in the proposed transfer and, if said transfer is to be allowed by the Commission, it urges the Commission to place conditions upon any such authorization in order to protect the public interest against anti-competitive behavior of the surviving company which might, by the combination of assets, interests and dominance, create the incentive to commit anti-competitive practices.

I. BACKGROUND

TRICOM USA, Inc. is a U.S. carrier licensed to provide local exchange and long distance service as well as global international services. It is headquartered in New Jersey, and serves, among other markets, the Latin American and particularly Dominican markets in the U.S.. Its main service currently is international, though as competitive markets permit, it has expanded and is expanding into U.S. domestic long distance and other services. It has registered with several state regulators, and has received its carrier identification code from BellCore for its domestic long distance service.

TRICOM USA also is a wholly-owned subsidiary of TRICOM, S.A., a Dominican full-purpose carrier which is licensed to provide a full array of services in the Dominican Republic. In 1991, TRICOM, S.A. became the first effective competitor of any type to challenge the 63-year *de facto* monopoly of Compania de Telefonos ("CODETEL") of the Dominican Republic. CODETEL, in turn, is and has been throughout its monopoly period and continuing to date, a wholly-owned subsidiary of GTE. While GTE has maintained historically to the Commission that it does not control the policies and behavior of its wholly-owned subsidiary, TRICOM understands that GTE includes CODETEL in its tax returns, has related officers and directors from parent to subsidiary and vice versa, has sent personnel from its Connecticut operation to CODETEL in ministerial and management positions. Moreover, GTE has received substantial annual dividends from international settlements (up to $75,000,000 per year) from CODETEL, has hosted ,managers of CODETEL at its various periodic and strategic meetings in the U.S., has used its U.S. counsel to reply to and defend TRICOM's claims of anti-competitive behavior of CODETEL, and otherwise shows all signs of knowledge of, interest in and substantial control over, CODETEL's behavior.

TRICOM, in it's attempt to establish itself as an operator in the Dominican Republic since its licensing in 1991, has encountered a broad range of anti-competitive behavior from CODETEL.[1] Some of this behavior occurred during times when CODETEL was remitting the large dividends noted above to GTE, attending GTE strategic meetings and sharing management staff on rotation or otherwise with GTE; and some of which behavior was actually defended before the Commission by GTE.[2]

[1] *See, e.g.* the record in GTE Telecom Section 214 Application, ITC-95-443.

[2] *See,* In the Matter of GTE Telecom Incorporated and GTE Mobilnet Incorporated Order, 13 FCC Rcd 4378 (1998). *See also,* GTE Telecom Order, 12 FCC Rcd 15,939 (1996); GTE Mobilnet Order, 11 FCC Rcd 12, 835 (1996); with particular reference to the comments submitted by TRICOM/DOMTEL and *ex parte* letters.

With this history, GTE created GTE Services Corporation. GTE Telecom, a subsidiary of GTE Services Corporation, sought and was granted, with conditions, Section 214 authority to provide international resale services globally. Additionally, GTE was recently the successful bidder on majority control of the Puerto Rico Telephone Company ("PRTC"), which transaction, among other things, requires the company to purchase only GTE-procured equipment.

More than 60,000,000 minutes of traffic are sent from Puerto Rico to the Dominican Republic each year. Further, due to the very close, proximity of the two islands, they are important to each other's economies. The United States in general has nearly one half billion minutes of traffic to the Dominican Republic annually, much of which is concentrated in New York, with a recent increase in emphasis on Florida by new Dominican immigrants and by Dominicans relocating to Florida for reasons of climate. In New York, the dominant carrier, controlling the majority of infrastructure in the State was NYNEX, now Bell Atlantic. In Florida, GTE is present, as well as Bell Atlantic. In Puerto Rico, GTE as noted above has purchased, pending final Commission approval, the principal carrier. In the Dominican Republic, GTE's CODETEL is the dominant carrier in all markets, with 85% market share in certain markets.

Finally, TRICOM USA has commenced operation in the United States, and has thereby encountered the need for local approvals. Bell Atlantic has key coordinating or quasi regulatory authority over many of these items. As explained in more detail below, Bell Atlantic has the ability to, and has, acted as a bottleneck to certain regulatory or other logistical authorizations needed by competitive carriers such as TRICOM. The same is true for CODETEL in the Dominican Republic.

II. PUBLIC INTEREST ANALYSIS

GTE states in its application that competition will be enhanced by the combination of assets and power of the two companies. Given the reality of global interrelationships of services, carriers and economic markets, and given the combined ability to these two carriers to deploy infrastructure into markets already dominated by one or both of them, together with the enormous resources that will be available to "attack" as the applicant states, any market, it is difficult for TRICOM to see the competitive benefit to users of international services; or to users of services provided by small, competitive carriers dependent upon Bell Atlantic or GTE for interconnection into their dominated markets. To the contrary, the merged result of these companies with particular focus, for example, on the Dominican Republic is foreboding for such competitive carriers.

For example, the market trend toward vast expansion of commercial private line service will be augmented by the migration to voice over the Internet. Such service is a high revenue generator, as it attacks the entire market of corporate and high-volume users. That market will belong to the operators best able to deploy infrastructure the fastest. CODETEL in the Dominican Republic already controls approximately 85% of the private line market of the Dominican Republic and combining its resources with Bell Atlantic will ensure not only the maintenance of that dominance, but the ability to cross-sell, create or continue high-volume service. The merged company would, thus, be able to squeeze small competitors out of the market. This proverbial "cross-rough" is not only a high risk to competition, but a threat to the elimination of competition that cannot match resources and muscle with the combined giant. While new wireless technologies assist somewhat in leveling the infrastructure deployment field, the combined power and dominance of core markets on both sides of the communications pipe will make it more difficult rather than less difficult for others to compete. If small carriers cannot compete, the consumer suffers in price and availability of service.

This effect was demonstrated in the exchange of IMTS traffic between the Dominican Republic and the United States when CODETEL was the monopoly carrier. Before competition, while CODETEL had all of the human and fiscal resources required to provide high-volume, low cost service, it elected to restrict its user market and charge the restricted market extremely high prices. This was done while sending to GTE dividends as high as $75,000,000 per year. Prices to Dominicans and calling prices to U.S. consumers for calls to the Dominican Republic did not decline in 63 years. Prices to declined for the first time only when TRICOM entered the market. Additionally, during the absence of competition, CODETEL saw no need to serve rural areas of the country. When TRICOM brought in competition and began deploying rural calling "Centros", suddenly, CODETEL similarly expanded it services to these and other areas.

GTE states in its application that the public interest will be served because the "merger will strengthen the ability of the companies to provide high-quality service and enable them to compete more effectively in both domestic and international telecommunications markets...."[3] There is little doubt that increased size and capacity of a merged GTE and Bell Atlantic, would increase the speed and ability of the companies to competes nationally as a full service operator capable of providing "one-stop-shopping". The merger may also allow GTE and Bell Atlantic to better compete with telecommunications giants such as AT&T, Sprint and MCI/Worldcom, to which the application dedicates the majority of its consideration. But at what cost will the merger of yet two more giants be to small, new entrant, competitive and niche carriers, and thus ultimately to the consumer?

The applicant further states that the consumer's interest is served by "increasing competition in international services...." Yet almost nothing is mentioned in the volumes of its application about international services, with the exception of required data lists of the international holdings of each company. Traffic patterns, key markets, markets where the merged company would be dominant on both sides of the communication, are not mentioned. All that is said is that GTE did not plan to go into Bell Atlantic's markets before the merger and vice versa.

It is not clear to TRICOM, therefore, how competition would be stimulated by GTE/Bell Atlantic's combined resources, whether or not they would otherwise compete with each other in the same market if they did not merge. Rather, it appears to be a formula that is more likely to lead to a reversion to the pre-competition market behavior and prices in U.S.-Dominican Republic service. An economic explanation of how GTE

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[3] GTE Corporation and Bell Atlantic Corporation, Application for Transfer of Control, at page 1, October 2, 1998, CC Docket No. 98-184.

contemplates that small, competitive, new entrants like TRICOM and all other second and later carriers in newly liberalized countries in Latin America and globally will effectively compete with the applicant under the proposed conditions to enhance consumer products and reduce consumer prices would be helpful. Alternatively, if the applicants contemplate that the consumer shall be better served by the elimination of such small, competitive carriers, in a new market paradigm, the economic explanation of that would clarify the otherwise unsupported assertions that the consumer benefits from the combination of independently able carriers. Of particular importance, is an explanation of how, with regard to the consumer interest, the threat of merger of two dominant, bottleneck carriers in corresponding markets, is balanced with the potential benefits of a single dominant company in these markets.

III. CONTROL OF BOTTLENECK SERVICES OR FACILIITES

The combined facilities of the merged company would give it the potential to serve as a bottleneck[4] to and from those overseas points where GTE and Bell Atlantic control the dominant carrier.[5] The merged entity thus would not only control facilities on the domestic end in the largest metropolitan areas of the United States, but also on the foreign and territorial end, particularly in the Dominican Republic, Venezuela, and Puerto Rico in this hemisphere. Also, it could leverage its strong or dominant presence in U.S. metropolitan areas with its non-dominant services overseas, including in Europe, Asia and Latin America. The applicant has not provided and there is no explanation for how control of potentially bottleneck facilities in, for example, Santo Domingo or Caracas and New York or Miami can favor public interest. Rather, the combination is the formula for anti-competitive behavior.

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[4] The FCC defines bottleneck as service or facilities that are necessary for the provision of international services, including inter-city or local access facilities on the foreign end. *See,* Market Entry and Regulation of Foreign -affiliated Entities, 11 FCC Rcd 3873 (1995).

[5] For example, GTE owns 100% of CODETEL, the dominant local and long distance service provider in the Dominican Republic and 25.9% and operational control of CANTV, the monopoly local and long distance provider in Venezuela.

Because the applicants have not described the services, infrastructure and plans of their overseas affiliates, the Commission should require that GTE and Bell Atlantic individually make affirmative showings that each of their overseas affiliates or subsidiaries do not presently control and have no potential to control bottleneck facilities by virtue of the merger or otherwise. For example, as noted above, CODETEL maintains bottleneck control, as does another GTE controlled company, Compania Anonima Nacional de Telefonos de Venezuela ("CANTV") in Venezuela. Similarly, Bell Atlantic dominates facilities-based services in New York, and GTE's recent purchase in Puerto Rico will give it significant control there. Communications between or among these routes would easily be subject to bottleneck control by a merged entity; and these routes are significant. It is likely as well, that Bell Atlantic's affiliates in other regions, like Eastern and Western Europe and Asia (including Thailand and China, through TelecomAsia, and the FLAG cable) create the same potential. Thus, before any approval is considered for this proposed merger, GTE and Bell Atlantic should be required to show that the merger would not allow the surviving company to discriminate against unaffiliated U.S. carriers on routes between the U.S. and Venezuela or the Dominican Republic, or similarly situated routes.

The lack of conditions controlling the potential of the merged company's ability to squeeze out the small, competitive niche or targeted-route service providers is likely to lead to the direct and acute detriment of consumers. Therefore, if approval of the proposed merger is to be considered by the Commission, the following conditions, at a minimum, should apply:

- Pursuant to 47 C.F.R. Section 63.10, where the merged company has the potential of bottleneck control, it should be regulated as a dominant carrier on the U.S.-overseas routes, including without limitation to, the Dominican Republic and Venezuela, and domestically between or among New York, Puerto Rico and other similarly situated locations;
- GTE and Bell Atlantic shall present information to the Commission, prior to any merger, demonstrating that each affiliate or subsidiary lacks bottleneck control. Such information shall be subject to comment by interested parties.

- Prior to authorization for transfer of licenses and authorizations, GTE and Bell Atlantic shall demonstrate that all overseas affiliates or subsidiaries are now treating, and shall be required into the future to treat, all non-affiliated U.S. carriers in a non-discriminatory manner;
- A process shall be implemented whereby the merged company shall provide detailed performance monitoring reports to the Commission, identical to those required for the Bell Atlantic-NYNEX merger, for a period of four years;[6]
- The Commission should impose other standards and requirements specified in the Bell Atlantic-NYNEX merger;[7]
- The Commission should impose any other conditions it deems necessary and appropriate to prevent anti-competitive behavior.

IV. CONTROL OF PUERTO RICAN MARKET

As noted above, GTE has successfully bid on the purchase of control of PRTC. Also as noted above, the market of minutes between Puerto Rico and the Dominican Republic is an important one, particularly for competitive niche carriers, and totals some 60,000,000 minutes per year. Moreover, it is an important private line market, between the two locations. The control of PRTC on the Puerto Rico side and CODETEL's dominant position on the Dominican side gives the merged company the ability to discriminate against non-affiliated carriers. The size of the market gives the merged company and its affiliates the incentive to discriminate against competitors.

Additionally, control of both sides of the communication, gives the merged entity the ability to be creative with the manner in which traffic is disclosed and reported between the two locations, as well as between the two locations and other locations, such as New York and the Dominican Republic. Any consideration of the merger would thereby require a condition to avoid anti-competitive behavior or inaccurate reporting due to this potential.

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[6] *See*, Bell Atlantic- NYNEX, 12 FCC Rcd 19995 (1997), Appendices C and D.

V. NORTH AMERICAN NUMBERING PLAN AND OTHER REGULATORY ISSUES

The North American Numbering Plan Administrator ("NANPA") is responsible for processing and assigning, on an independent and impartial basis, carrier identification codes ("CIC"), N11 codes, central office codes, area codes, Signaling System 7 Network codes, and Automatic Number Identification Integration Integers ("ANI II").[8] NANPA is designed to ensure that numbers are available to telecommunications operators on an efficient, timely and equitable basis.[9]

While NANPA must act on an impartial basis, and despite the changes in the domestic telecommunications market since 1996, new entrants are at the mercy of the incumbent local exchange carriers to ensure that they are operational on a timely basis in order to properly and effectively compete in the market. Incumbent operators have the ability to delay access to the market by potential competitors. Bell Atlantic, for example, as a result of the proposed merger, would also have the incentive to do so. Such delays can be subtle and highly anti-competitive. TRICOM very recently experienced a delay in implementation of its CIC code and its potential reclamation due to Bell Atlantic's lack of responsiveness.

A carrier identification code is one that allows switching systems to identify long distance calls as belonging to one carrier or another. Thus, the lack of a carrier identification code, impedes or bars a carrier's ability to compete in the U.S. long distance market. CIC assignment was a Bell Core function, administered currently through Lockheed Martin, which allocates CIC codes according to a set of specific rules. This forms part of the North American Numbering Plan ("NANPA"). The rules are

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[7] *Id.*
[8] 47 C.F.R. Section 52.13. The Dominican Republic and Puerto Rico participate in the North American Numbering Plan.

implemented, on Bell Core's behalf, by the dominant carrier of each regional member of the NANPA. Among other things, Bell Core's rules require that, within a certain period of time following the request for a CIC code, a carrier must have on file with Bell Core a letter from the local exchange carrier which confirms the implementation of access of trunks. In New York, the carrier controlling the infrastructure, and thus required to send Bell Core the letter is Bell Atlantic. If the letter is not sent within a certain period of time, the CIC application lapses, and the code assigned enters a reclamation process. That process cannot be stopped without the required letter from the infrastructure controller, Bell Atlantic, in the case of New York and New Jersey.

Recently, TRICOM's CIC was placed by Bell Core in a reclamation process for want of the required letter from Bell Atlantic. While no untoward motive is attributed to Bell Atlantic for its substantial delay and lack of responsiveness to TRICOM's pleas for attention to this matter, Bell Atlantic allowed the reclamation process to proceed until TRICOM's CIC was about to be reclaimed, when TRICOM's counsel intervened to encourage Bell Atlantic to act to halt the reclamation process. The proposed merger would give Bell Atlantic the incentive, in addition to its obvious ability to be a bottleneck to essential authorizations of its own competitors.

This problem is compounded when the same carrier controls the numbering plan for its state, territory or country on the other side of the communication. For example, the Dominican Republic is part of the North American Numbering Plan and GTE's CODETEL controls the numbering plan for the country. PRTC controls the numbering plan for Puerto Rico. Indeed, when TRICOM S.A. was first licensed in the Dominican Republic, and the regional Bell Core meeting was scheduled to be held in Santo Domingo and hosted by CODETEL, the latter cancelled the regional Bell Core meeting because Bell Core invited TRICOM to attend the meeting.

The simultaneous control of all key markets' numbering plans by the single merged company has unlimited potential to stifle the expansion of competitors, to the

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[9] *Id.* At Section 52.9.

continuing and ultimate detriment of the consumers of services. The merger supplies the incentive.

Similarly, some states of the United States, assign to the dominant carrier, authority of a regulatory or quasi regulatory nature. For example, in New Jersey, where TRICOM is headquartered, Bell Atlantic coordinates and is responsible for authorization of resale applications. While naturally GTE Telecom, which has international resale authority from the Commission, would not be able to resell Bell Atlantic or any other affiliate's services per its resale order, that is not enough to eliminate anti-competitive behavior. Simply delaying the processing of competitors' applications for authority, like delaying competitors' CIC code authorization, is sufficient to use one's bottleneck regulatory authority to the disadvantage of competitors.

Thus, in addition to the conditions set forth in Sections III and IV above, should the Commission decide that the danger of anti-competitive behavior evoked and promoted by this proposed merger is outweighed by potential benefits to the consumer, then Bell Atlantic and GTE should be prohibited from maintaining or assuming any role within any state, territory, logistical or organizational system of the United States, or any regulatory or quasi regulatory role in any state or territory of the United States. Neither company should be permitted to continue or accept any role whatsoever, outside the specific operation of its own company, that controls or has bearing upon the ability of any other operator to operate within U.S. systems and political subdivisions.

VI. CONCLUSION

TRICOM does not see any economic or services benefit to consumers of telecommunications services from the proposed merger. On the contrary, TRICOM seeks explanation from the applicants as to how the combination of their formidable human and fiscal resources in the control of bottleneck facilities on each side of international communications cannot be seen as a direct threat to competition on those routes as well as to small, niche services providers in those services. The applicants should be required to provide a detailed explanation of how consumer interests are served by the elimination of those small, or competitive service providers, or alternatively what assurances GTE and Bell Atlantic can provide that it will not use its end-to-end control to squeeze out such competitors.

Should the Commission consider the proposed merger, then at the very least, the conditions suggested in Sections III through V of these Comments should be imposed.

Respectfully submitted by:

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Counsel for TRICOM USA, Inc.

Dated: November 23, 1998

CERTIFICATE OF SERVICE

I, Judith D. O'Neill, do hereby certify that a copy of TRICOM USA, Inc.'s Comments in response to the GTE Corporation and Bell Atlantic Corporation Application for Commission Consent to Transfer of Control, dated November 23, 1998, has been sent by U.S. Mail, postage prepaid, to the following:

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